Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

SHAHEED TAALIB'DIN MADYUN,
Petitioner,

v.

LT. KIRBY LINJER, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

SHAHEED MADYUN #75225
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April 16, 2010

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QUESTION PRESENTED

Whether a state prisoner who abided strictly by 42 U.S.C. § 1997e(a) amendment on exhausting all "available" administrative remedies when he filed a timely inmate complaint within the time frame of 14 days as provided by Department Rule under DOC § 310.09(3); where the Prison Warden provided a sworn affidavit for all the parties to the effect of affirming inmate's position on whether he had exhausted the only available, or existing prison policy on exhaustion, informing the Court, Defendants, and Plaintiff Inmate that during the time the prisoner filed his complaint in February of 2002, Wisconsin did not have any administrative policies requiring the prisoners to appeal a rejected complaint to the wardens, and the filing of the complaint was exhaustion of all available remedies regardless of whether the complaint was rejected or not; is an inmate denied a constitutional right under Amendment XIV Section 1, to seek redress under 42 U.S.C. § 1983, when the District Court expands on 42 U.S.C. § 1997e(a) by requiring a prisoner who was almost beaten to death by correctional staff and is permanently disfigured and crippled, to exhaust newly created administrative remedies that were not in existence in February of 2002, and became effective January 2, 2003, with the unrealistic requirement of having a prisoner do a timely appeal to the Warden eleven months later from the time the new law was passes, but within 10 days from the February 2002 date of incident before March 10, 2003, which is impossible for anyone to do; does this new dimension to 1997e(a), as created by the District Court violate a prisoner's right to utilize 42 U.S.C. § 1983 if a prisoner is permanently barred from

courts if he cannot do the impossible by anticipating the laws the State Legislature will create 11 months in the future after his initial exhaustions of all "available" administrative remedies?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following identifies all of the parties appearing here and before the United States Court of Appeals for the Seventh Circuit:

The Petitioner is Shaheed Taalib'din Madyun #75225, a pro se litigant inmate housed at the Waupun Correctional Institution, at PO Box 351, Waupun, Wisconsin 53963-0351.

The Respondents are Lt. Kirby Linjer, Lt. Keller, John Doe #1, John Doe #2, and Lt. Kuster, all correctional officers at the Oshkosh Correctional Institution, the place of the beating.

Dismissed respondent-defendants are Judy Smith, Angie Woods, Co. II Lemon, Co II. Carol Cook, all Oshkosh Correctional Institution staff members, where Shaheed Taalib'din Madyun was beaten.

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DECISIONS BELOW

The decision of the United States Court of appeals for the Seventh Circuit is reported as Madyun v. Linjer, et al., 333 Fed. App'x 132, 2009 U.S. App. LEXIS 22305 (Oct. 9, 2009). It is cited as Case No. 08-4003 of 2008, and a copy is found at 1a. The order of the U.S. District Court for the Western District of Wisconsin is not reported. A copy is found at 11a. The Order of the U.S. District Court for the Eastern District of Wisconsin is not reported. A copy is found at 24a.

JURISDICTION

The judgment of the United States Court of appeals for the Seventh Circuit was entered on October 9, 2009. Petitioner filed petition for Rehearing En Banc on October 28, 2009, and the Court issued an order denying same on December 15, 2009. A copy of that order is found at 40a. Jurisdiction of this matter is conferred on the Supreme Court by 28 U.S.C. § 1251(a)(b)(2); 28 U.S.C. § 1254(1); and 28 U.S.C. § 1291.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

1. This case involves Amendment XIV to the United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.
>
> Section 5. The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

2. The Amendment is enforced by Title 42, Section § 1983, of United States Code:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State, Territory, or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding, for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

3. The Amendment in question that is being violated or misapplied by the District Court and affirmed by the Seventh Circuit Court of Appeals is 42 U.S.C. § 1997e(a), which provides:

> "...no action shall be brought with respect to prison conditions under 1983 of this title, or any other federal law, by a prisoner confined in any jail, or other correctional facilities until such administrative remedies as are available are exhausted..."

STATEMENT OF THE CASE

A. Facts

The petitioner Shaheed Taalib'din Madyun's complaint alleged that he was a prisoner in Wisconsin who is a well-known jailhouse lawyer who had challenged prison conditions for over 35 years, and represented hundreds of prisoners on a range of issues relative to incarceration or criminal appeals. The prison administrations, and one member of the Wisconsin justice Department decided that a prisoner of Madyun's caliber of litigious determination was very dangerous to the proper functions of Wisconsin's prison system and agreed to move him from prison to prison (maximum) unilaterally and disrupt his ability to litigate for himself, or for other inmates. (Ltr. to Charles Hoomstra, Wisc. Dep't of Justice, dated June 23, 2000; 7th Cir. No. 08-4003, R. 22, Ex. 3.) He was then transferred from the Green Bay Correctional Institution in July of 2000, to the Columbia

Correctional Institution and placed directly in segregation without a conduct report or any allegations of rule violations. That institution released Madyun from segregation, refusing to be part of the conspiracy to maintain him in segregation simply because he exercised his right to access to the Court. However, they were in agreement to continue the unilateral transfers to keep Madyun off balance and prevent his legal activities. Six months after he was sent to Columbia Correctional Institution, he was again packed up and transferred to Oshkosh Correctional Institution and placed in segregation overnight. Only moments after arriving at Oshkosh, three supervising officers, Lieutenants, approached Madyun to tell him that they did not tolerate inmate litigators to operate in their facility, and threatened Madyun to be placed back in their segregation unit. Madyun personally reported the threats to the prison warden, Ms. Judy Smith, and her deputy warden, Fred Nelson, during the orientation period. Shortly after making the reports to the warden and her deputy warden, Madyun was again placed back in segregation and charged with several disciplinary offenses by prison officials. While in segregation officers made it clear that the policy of using unilateral transfers from prison to prison to stop Madyun's legal activity would stop. They would now be using force to get Madyun to stop. Staff started putting ground up razor blades in Madyun's food with medication mixed in it. When Madyun become ill from consuming such items, he began throwing up blood and foaming from the mouth. A high-ranking official, the Unit Manager, Ms. Angie Wood, was present when this was done to Madyun and personally observed him throwing up and bleeding from the

throat, crying in pain. This "high-ranking" staff member then confiscated Madyun's food tray containing the ground up razors and left saying she was going to investigate the matter by talking to her staff who fed Madyun. She never returned, and all medical treatment was denied to Madyun. A few days later a fire was set on the Unit, and all other inmates, with the exception of Madyun were either released from their cells to safety, or their cell trap-doors were opened for air to get in the cell to allow them to breathe. The defendant in this case, Lt. Kirby Linjer, had instructed his officers not to open the trap-door of Madyun's cell, and allowed Madyun to remain in the fire/smoke filled cell which, as intended, put Madyun in the hospital suffering from smoke inhalation after being found on his cell floor by a different shift of officers hours later. Madyun filed an inmate complaint on the fire incident. He was released from segregation and continued trying to get something done about the attempts on his life by the prison staff. He was again threatened by staff to stop pursuing the matter. He continued, and again, he was placed in segregation for no other reason than trying to make his complaints. But this time Madyun was afraid for his life. So he wrote a letter to the warden and a prisoner expressing his fears. Lt. Kuster intercepted the letters and came to Madyun's cell with another officer to make it known to Madyun that things were about to really get nasty. Lt. Kuster and the other officer took Madyun from one segregation section to a section where other inmates could not see his cell, or what was happening in his cell. Lt. Kuster allowed the other officers to take Madyun to the cell. They were all wearing all black S.W.A.T. uniforms. After everyone entered the building, once inside, Madyun observed

the Deputy Warden, Fred Nelson, alone with Lt. Linjer, Lt. Kuster, and several officers Madyun recognized by sight only. Madyun assumed that there had been trouble in another unit. Lt. Kuster was waiting for the other officers to bring Madyun into the building. He then instructed them to place Madyun in cell number 24. Lt. Kuster and the other officers walked Madyun to cell number 24 at the very end of the segregation unit hall where no one can, even if they tried, see what was going on down there. Once in the cell Madyun laid down to sleep. As he was dozing off, he was awakened by what sounded like a back door open and a lot of foot movement outside of his cell door. Madyun then heard shutters on the other prisoners' cells being shut, and a voice stating, "Open cell number 24". The lights were still off in Madyun's cell. The door opened, Madyun turned over on the bunk to see what was happening. He then observed three to five black uniforms that he had seen segregation officers wearing when he first entered the segregation unit. But those individuals were not only wearing black suits. They were now wearing black ski masks too. They jumped on Madyun and began beating him, hitting him in the face repeatedly, picking him up and viciously body slamming him, busting his head. All of this ribs on his right side were kicked in; him molar tooth was kicked so hard that it split down to the root. They viciously jammed a night stick up his rectum and completely dislodged his colon, turning his rectum inside out. His liver was damaged, he was kicked so hard in his head that several disc slipped in his neck and his back that it rendered him temporarily paralyzed. Officers voiced their intents to kill Madyun, but instead left him in a pool of his own blood lying on his cell floor. Soon thereafter,

Madyun filed an inmate complaint about the beating. 7th Cir. No. 08-4003, R. 22, Ex. 1a-1i, Complaint dated Feb. 28, 2002. And just like before, with the razors in his food, the complaint staff would not file a complaint for him, and rejected it without assigning a file number to it to allow some type of an appeal. A few days later after filing the complaint, the prison complaints examiner came to Madyun's cell and made threats that Madyun would be hurt again if he continued to complain about the beating. Madyun then filed a complaint with the warden about the complaint examiner making such a threat. A day later, another officer, Co. II Carol Cook, came to Madyun's cell and cuffed him through the door slot. Once cuffed, she snatched on the cuffs pulling Madyun's face into the cell door with her weight and feet propped against the door, pulling Madyun's arms until both of his wrists were broken open. She made it known that she was doing it because Madyun had again made a complaint to the warden's office about the beating. And, again, Madyun was denied medical treatment by officers on that shift. Both of Madyun's hands swelled to triple their size from the cuffs, to the point he could not ball up his hands. When shift changed, and different officers came into segregation unit, and again saw that Madyun was in a battered condition, they decided that they had to get involved even if it meant being fired, as they made the conclusion that fellow officers were involved in trying to kill Madyun. Officers notified the Health Service Unit of Madyun's medical condition and rushed him there for medical treatment. They filled out incident reports and filed them with the Institution's Security Department. The warden's office was notified as well. Madyun filed timely complaints on every incident of violence

that had been done against him by staff, and filed them in the manner pursuant to the only available department rules that allowed for exhaustion of "Available" Administrative Remedies. The prison staff at the Oshkosh Correctional Institution assigned to do all investigations of inmates complaints refused to file the complaints submitted by Madyun, and simply stamped the complaints with the word "REJECTED" on them without assigning a DOC number to them to allow any further review of their actions.[1] Even though Madyun knew he could not appeal the complaints unless an assigned number was attached to the complaints, Madyun tried to appeal anyway to get the Corrections Complaint Examiner (hereinafter CCE) to review his filed complaints.[2] Once the CCE refused to review the rejected complaints on appeal, there were no other "available" administrative remedies such as appealing to the warden during that period in time for March 2002. Affidavit of Judy P. Smith, dated Aug. 25, 2005. Madyun had thus exhausted the only available administrative remedy that Wisconsin DOC had to offer prisoners, and his only available avenue of seeking redress was by filing a lawsuit in federal or state court.

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[1] See 7th Cir. No. 08-4003, R. 22, Ex. 1a-1i, Complaint dated Feb. 28, 2002, filed about the vicious beating officers did to Madyun.

[2] See 7th Cir. No. 08-4003, R. 22, Ex. 8, handwritten note of Apr. 25, 2002, form noting no complaint number listed on form, Complaint, etc., Madyun's attempts to do an appeal of the rejected complaint to the CCE, and their denial due to the prison staff refusing to assign a number to the complaint.

On April 7, 2003, Madyun filed a Civil Rights Action in the Eastern District of Wisconsin, alleging violations of his Civil Rights pursuant to 42 U.S.C. §§ 1983 and 1985, in Case No. 04-C343. On November 29, 2004, Judge William Griesbach issued and order partially granting summary judgment to defendants based on Madyun's inability to properly identify his documents he claimed as offer of proof showing exhaustion of all available remedies. (Pet. App. 32a) On December 27, 2005, the Judge dismissed the case in its entirety because Madyun's offers of proof were misunderstood by the Court, and the Judge ruled the Defendant's summary judgment motion was granted, dismissing the case altogether. (Pet. App. 24a) As Madyun was not able to explain the impossible new rule requirement, the Court had imposed on him to require him to prove exhaustion of a rule that was not in existence during the time of filing the complaints and trying to appeal same. Particularly where the prison warden had provided a sworn affidavit to the Court informing it that there was no rule requiring Madyun to appeal a rejected complaint to her back in March of 2002. See Affidavit of Judy P. Smith, dated Aug. 25, 2005. Madyun appealed the December 27, 2005, decision to the Seventh Circuit filed under Madyun V. Lemon et al., Case No. 06-1310 challenging the dismissal of his case for failure to exhaust a rule that was not in existence. Cited also as Madyun v. Cook, et al., 204 Fed. App'x 547, 2006 WL 2053466 (7th Cir. 2006). The Seventh Circuit dismissed, affirming the district court's decision. Because that case was dismissed for Petitioner's failure to exhaust his administrative remedies rather than on the merits, the case was not barred under the doctrine of claim preclusion. Madyun then filed a second lawsuit by returning to

the Western District Court after again trying to file another round of complaints with the DOC to exhaust the administrative remedy that was not in existence when he first initiated his complaints in February of 2002. Wisconsin DOC rejected the complaint as being untimely filed, and Madyun filed another lawsuit under Madyun v. Smith, Case No. 07-C-318-C before Judge Barbara Crabb. On July 31, 2007, Judge Crabb granted leave to proceed against 16 of the allegations made in his civil rights complaint. On December 27, 2007, Judge Crabb severed the single lawsuit into nine different lawsuits destroying Madyun's ability to continue with his conspiracy charge. After two jury trials on two cases severed, Madyun v. Cook, 08-CV-30-bbc, and Madyun v. Linjer, 08-CV-32-bbc, Judge Crabb dismissed the entire case, alleging a failure to exhaust administrative remedies, and based her decision on Judge William Griesbach's order in Case No. 06-1310. Madyun appealed that dismissal and all related issues to the Seventh Circuit Court of Appeals. Due to the fact that Judge Barbara Crabb relied solely on the decision and order of Judge Griesbach's order dismissing for failure to exhaust, Madyun filed a motion with the Seventh Circuit court of Appeals to Recall that Mandate issued on July 24, 2006, in Case No. 06-1310 affirming the District Court of Wisconsin in Case No. 04-C-343, in previously filed Madyun v. Cook et al., filed on August 31, 2009. On September 16, 2009, the Seventh Circuit Court of Appeals denied the motion. On October 9, 2009, the Court again affirmed the decision by Judge Barbara Crabb to dismiss the case for failing to exhaust. On October 28, 2009, Madyun filed a petition for Rehearing and Petition for Rehearing En Banc, and posed the question

contained within the Writ of Certiorari now being presented to this Supreme Court. On December 15, 2009, Rehearing En Banc was denied. (Pet. App. 40a)

B. Basis For Supreme Court Jurisdiction

This case raises a question of interpretation of Due Process and a prisoner's right to have access to the Courts to seek redress by utilizing 42 U.S.C. § 1983 after Amendment § 1997e(a), was passed to include the language "Available Remedies" requirement as part of exhaustion. The Court needs to address the issue of unavailable remedies being used to deny prisoners a right to file suit in federal court. The District Court had jurisdiction under the general question jurisdiction conferred by 28 U.S.C. § 1331.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. Conflicts With Decisions Of Other Courts And Conflicts With Previous Rulings That The Seventh Circuit Has Made In The Past.

The holding of the Seventh Circuit court of Appeals in this case requiring a prisoner, Madyun, to prove exhaustion of unavailable Administrative Remedies before he can file a 42 U.S.C. § 1983 Civil Rights Lawsuit is directly contrary to the holdings in Booth v. Churner, 532 U.S. 731 (2001) on "available remedies"; Brengettcy v. Horton, 423 F.3d 674 (7th Cir. 2005) on prisoners being beaten by Correctional Officers and exhaustion being waived; Perez v. Wis. Dept. of Corr., 182 F.3d 532 (7th Cir. 1999); and

Teague v. Lane, 489 U.S. 288 (1989), on whether this case announces a new rule declaring Amendment § 1997e(a) to include remedies that were not available for exhaustion purposes at the time a prisoner filed his original complaint.

B. Importance Of The Question

This case presents a fundamental question of the interpretation of this Court's decision in Booth v. Churner, supra, and its ruling in Teague v. Lane, supra. The question presented is of great importance because it affects the operations of prison systems in all fifty states, the District of Columbia, and hundreds of city and county jails. In view of the large amount of litigations over prisons and jails and their complaint system and available remedies each jail or prison has to offer to allow for exhaustion of available administrative remedies, guidance on the question of exactly what is meant by "available" remedies as is stated in 42 U.S.C. § 1997e(a) is important to the judiciary. In addition, the question is of great importance to prisoners, as it affects their ability to receive a fair decision in courts where exhaustion of "available" remedies are required, but if courts are permitted to apply newly promulgated exhaustion rules of the DOC that were not in existence when a prisoner filed his compliant at the jails, prisons, or lock ups, and those rules have expiration dates as to when the prisoner must file, and the courts can hold that expiration date against a prisoner applying it to the old procedure, then prisoners can be forever denied a right to file a suit against prison staff or DOC if he cannot do the impossible of looking in the future and knowing what new rules will be coming, or knowing to do an

act even though there was previously no rules requiring him to do so, and no avenue allowing for it to be done.

The issue of importance is enhanced by the fact that the 7th Circuit, and District Courts (Eastern and Western) in this case has seriously misinterpreted Booth v. Churner, 532 U.S. 731 (2001), which requires exhaustion of "available" remedies, and Johnson v. Litscher, 260 F.3d 826, 829 (7th Cir. 2001), which clarify that exhaustion is required where there is an administrative remedy to exhaust. Likewise, misinterpreting Lewis v. Washington, 300 F. 3d 829, 833 (7th Cir. 2002); and Underwood v. Wilson, 151 F.3d 292, 295 (5th Cir. 1998), which dictates that an inmate is deemed to have exhausted his administrative remedy "when the time limits for the prison's response set forth in the Prison Grievance Procedures have expired". This is particularly so when the records demonstrate that the Eastern District of Wisconsin on November 29, 2004, relied on that case precedence when it admitted crucial facts that Madyun did in fact file his timely complaint on the beating he suffered. See A.V. at p. 4-5.

The common sense understanding of "available" remedies is that there is an available remedy during the time the prisoner is to begin his or her exhaustion procedure, and nothing in Johnson, supra, or Underwood and Lewis, supra, suggest otherwise. Which brings to question the methods used by the District Courts, and affirmed by the Seventh Circuit Court of Appeals, that prisoners, such as Madyun can be held to a different standard not recognized or intended by the passing of 42

U.S.C. § 1997e(a) requiring that incarcerated persons first exhaust all "available" administrative remedies before they can bring a lawsuit to court. Nothing in 42 U.S.C. § 1997e(a) required a prisoner to exhaust remedies that were not available, or required a prisoner to return after he has completed his timely round of exhaustions to exhaust matters that have obviously been time barred due to the new policy coming long after the expiration date of the original time period of initial filing requirements. Both Lewis and Underwood both agree that the requirement of having a prisoner exhaust remedies, is that there must be a remedy to exhaust at a specific time. And neither cases cited supra, remotely suggest that a prisoner who exhausts remedy timely under what is currently available, must return eleven months later after a New Rule is promulgated requiring the inmate to now do additional steps in the complaint process within a ten day period, to timely do the new procedure within that ten days, but make it timely from the initial filing eleven months prior to the passing of the new rule. This was an impossible requirement– neither the District Court nor the Seventh Circuit bothered to give an explanation on how it could be done. Nor were the Defendants required to explain that impossible process when they used it as a defense after personally admitting there was never a rule which required Madyun to appeal a rejected complaint in February of 2002, admitting Madyun had properly completed the only available remedy when he filed the initial complaint. Affidavit of Judy P. Smith, dated Aug. 25, 2005.

In a nutshell, this is Madyun's case:

Madyun was seriously beaten by correctional officers while at the Oshkosh Correctional Institution in February 2002. He filed a complaint a day or so later as required by the department rules which require an inmate to file a complaint within 14 calendar days. See DOC § 310.09(3) at 7th Cir. No. 08-4003, R. 22, Ex. 1a-1i, Complaint dated Feb. 28, 2002. The prison staff stamped "Rejected" on the complaint and refused to file it by assigning a file number to it as required by their own rules under DOC § 310.11(7). See 7th Cir. No. 08-4003, R. 22, Ex. 10, DOC 310, Complaint Procedures. Since there was no requirement or avenue allowing Madyun to appeal the refusal to file his complaint to the prison warden, Madyun tried to appeal the matter to the Corrections Complaint Examiner who reviews all complaints prison staff dismiss. See 7th Cir. No. 08-4003, R. 22, Exh. 8. handwritten note of Apr. 25, 2002. The CCE refused to review the complaint because a number had not been assigned to the complaint. Id. Madyun even wrote the warden letters. The only response she gave was to have officers do more physical harm to Madyun by breaking both of Madyun's wrists. There was no other available remedy that Madyun had to do in order to exhaust his administrative remedies. Madyun was moved from Oshkosh and sent to Green Bay, and eleven months after the beating incident and Madyun's filed complaints, the Wisconsin Legislature passed new legislation, whereas, under Chapter HSS § 310, was renumbered Chapter DOC § 310 under § 13.93(2m)(b)1, 2 and 7, Stat. The new chapter being created, Register November 30, 2002 No. 563, effective December 1, 2002, required a prisoner to now appeal a rejected complaint to the prison wardens. The new rules only allowed for ten

days to do that appeal. After Madyun had filed his civil rights lawsuit in the District court by filing same in the Eastern District under Madyun v. Lemon, No. 04-C-343, the Assistant Attorney General Charles Hoornstra sought to get the warden at Oshkosh, Ms. Judy Smith, who was a defendant, to go alone with falsely claiming Madyun was required to file an appeal of his rejected complaint with her. Warden Judy Smith resisted the temptation to put forth a known false defense to say Madyun was required to somehow appeal the rejected complaints to her in March of 2002. Instead, Judy Smith provided an affidavit to remove all doubt that such a policy or procedure was not in place or a rule requirement imposed on Madyun in March of 2002. See Affidavit of Judy P. Smith, dated Aug. 25, 2005. Counsel Charles Hoornstra pursued the false defense, that Madyun was required in March of 2002, to appeal the rejected complaints to the warden regardless of the new rules not being in existence at that time, but coming later on December 1, 2002, and the Eastern District Court agreed that the new rules that became effective on December 1, 2002, applied to Madyun for March 2002, and said ruling was applied without stating how it could have been timely within 10 days of March of 2002. Madyun appealed to the 7th Circuit Court of Appeals, and the 7th Circuit affirmed that he had failed to exhaust under those circumstances; and gave a false impression that filing an appeal to an unavailable remedy back in March of 2002, somehow could have been done in December of 2002, after the new rule was created. Madyun returned to the District court in Wisconsin, based on the 7th Circuit ruling, and filed a second round of complaints only to have them rejected as being filed untimely because it was not

filed within the 14 days after the incident in February of 2002. See 7th Cir. No. 08-4003, R. 22, Ex. 9, Complaint received Oct. 26, 2006, Complaint rejection dated Nov. 1, 2006; Request for Review of Rejected Complaint, signed Nov. 2, 2006; Decision on Complaint Rejection, dated Nov. 6, 2006. Madyun again returned to Federal Court by filing his Civil Rights suit again, and again demonstrating exhaustion. The Western District Court presided over by Judge Barbara Crabb then broke Madyun's suit up into nine different lawsuits without him being notified and allowed an opportunity to amend the suit in a manner to maintain his conspiracy claims. The same Defendants the Plaintiff Madyun had filed a complaint against the two complains Oshkosh stamped "rejected" on, Judge Barbara Crabb allowed Madyun to proceed against some of them with no problems of failing to exhaust administrative remedies. For instance, Carol Cook was complained about in the rejected complaint dated, April 18, 2002, which went to a jury trial under Madyun v. Carol Cook, No. 08-CV-30-bbc. See 7th Cir. No. 08-4003, R. 22, Ex. 1, Complaint dated Feb. 28, 2002, p. -4-. The same complaints the court claim Madyun failed to exhaust remedies. The Western District Court presided over the Judge Barbara Crabb again ruled in favor of the Defendants by dismissing Madyun's claims under a claim that he somehow failed to exhaust his available remedies, and she owed no difference from the previous decision issued by Judge William Griesbach in Madyun v. Lemon, No. 04-C-343, dated December 27, 2005, dismissing because Madyun could not appeal a rejected complaint due to no rule being in place at that time in 2002. (Pet. App 24a) Madyun then appealed again to the 7th Circuit Court

of Appeals under Madyun v. Linjer, 08-4003 and that court again said Madyun had failed to exhaust available remedies by appealing the rejected complaint. (Pet. App. 1a) And Madyun raised the question being asked in this Supreme Court on whether a rule not in existence at the time of filing inmate complaints can be considered a failure to exhaust if exhaustion of the complaints were completed prior to the creation of the new rules. The 7th Circuit Court of Appeals failed to address the question or provide any guidance on how it can be done. The lower court's reasoning that Madyun somehow failed to do an appeal to the rejected complaint where no rule existed at that time to do so, and the warden even signed a sworn affidavit which clearly removed any misunderstanding on the issue by requiring a prisoner to file an appeal by attaching it to something mandatory and unwritten is totally unconvincing as a justification to deny a prisoner his constitutional rights to seek redress in court. No rule was pointed to by either the Defendants or the courts to say this was the rule at that time in March of 2002. The court action was in complete conflict with this Court's ruling in Booth v. Churner, 532 U.S. 731, requiring a remedy to be available for exhaustion purposes; and it conflicts with previous rulings by the 7th Circuit Court of Appeals, Johnson v. Litscher, 260 F.3d 826 (7th Cir. 2001) which clarify that exhaustion is required where there is an administrative remedy to exhaust. When the United States Legislature passed 42 U.S.C. § 1997e(a) for incarcerated person, it did not extend that law to include rules or policies that the Department of Corrections did not have in existence, but would be passing almost one year after the initiation of the inmate filing his complaints timely

in February of 2002, only to have them not count because a Judge misunderstood what is meant by available remedies, and apply a new rule passed months later and rule that because that new rule was not used back in February of 2002, even though it was passed later in December of 2002, the prisoner is forever barred from seeking redress until he can somehow apply a December 2002 new rule to February 2002 within 14 days of February 28, 2002, until March 13, 2002. And not beyond until December 2002, when the new rule was created and became effective. The standard in 42 U.S.C. § 1997e(a) permits judges to exercise their discretion to allow prisoners to seek redress where there are no avenues available to exhaust remedies. It does not allow judges to create exhaustion problems where none exist. Both the Eastern and the Western District courts of Wisconsin and the 7th Circuit Court of Appeals have seriously misinterpreted 42 U.S.C. § 1997 e(a) and Booth v. Churner, supra, as well as Johnson v. Litscher, supra, by failing to make the crucial distinction between 'available" and "unavailable" administrative remedies to be exhausted before filing a suit in a federal court. This Supreme Court should correct this misinterpretation and make it clear that 42 U.S.C. § 1997e(a) cannot be viewed to mean a court can bar a prisoner from filing suit when it is clear that a new rule passed ten months after the prisoner has begun his legal process by dismissing the prisoner's claims when he cannot take a new rule back in time and apply it ten months before the new rule was even in existence, and do it within 14 days from the initial filing of his complaint. The Court should always stand on the side of right and human dignity. There is no dignity in asking prisoners to do the obviously impossible

task of knowing what laws would be passed ten months before they are passed, and applying them as known policy to the complaint filed. Nor is there anything right by deliberately dismissing a prisoner's claim because he cannot time travel and know what rules are to be passed and act on them before they are passed. Allowing such a ruling to stand is unduly hazardous to institutional safety and the Correctional goals intended by the U.S. Legislature when it passed 42 U.S.C. § 1997e(a) requiring a prisoner to exhaust the "available" remedies. Were it to mean unavailable remedies, the government probably would not have required any remedies at all, and simply said, all prisoners are barred from seeking redress, no matter the situation.

C. Review Of Entire Case If Necessary

This is a case where a prisoner was so harmed by Correctional Officers that eight years later he is about to have a third surgery to reconstruct his rectum in an attempt to stop the bleeding from that area which has been going on since officers ripped out his colon with a night stick, forcing the colon to heal dislodged. He was in the hospital for six months again years later because his organs almost stopped as a long term consequence from the beating. He was paralyzed. He is currently crippled. He has spinal damage. He has liver damage. He has suffered severe emotional damage. The record shows that every time he complained, the complaints were met with more harm inflicted upon him by officers working in that institution. The record will also show that the District court's decisions were based more on discouraging Madyun from seeking redress than based on the laws guaranteeing a prisoners

right to seek redress in courts for wrongs done to them while incarcerated. The records show (1) that both District Court Judges expressed their personal belief that they did not believe correctional officers would do Madyun the type of harm claimed in his civil complaint, and the record does appear to suggest that belief was the driving force for those courts to dismiss Madyun's case, rather than abiding by the law of 42 U.S.C. § 1997e(a) on "available" remedies, the court created an "unavailable" remedy to justify dismissing the case; (2) the Court then destroyed Madyun's ability to present his conspiracy claims. It broke the single case up into nine different cases and forced Madyun to either repay nine court costs of $450.00 on each case or have the case dismissed. Madyun was not allowed to amend his filed complaint to save his conspiracy claims; (3) the District Court then assigned a case that did not exist, stating that if Madyun was to appeal the severance issue it had to be done through the case identified by the Court. It was impossible for Madyun to appeal the severance via a case not in existence; (4) Madyun was denied any rights to call witnesses during the jury trial; (5) Madyun was denied any rights to receive any discovery, or interrogatories he motioned for; (6) when Madyun was required to respond to Defendant's defense motions, Defendants confiscated all of Madyun's files to prevent his ability to respond. Madyun filed a temporary restraining order seeking to have those files retuned to allow him to properly respond. The District court denied the request and told Madyun he had nothing coming, and required him to respond without a record, then dismissed his case by granting Summary Judgment to the Defendant because Madyun could not properly respond with the

documented evidence the Defendants were withholding from the Court and Madyun; (7) during the pre-trial states Madyun motioned the Court to postpone the trial because he was scheduled for surgery. The District court denied the request and forced Madyun to defend by prosecuting his case while he was bleeding from the rectum and in a great deal of pain and unable to concentrate on matters that involved the jury trial; (8) Madyun asked for an attorney to be appointed to assist him under those circumstances, and was denied both times. Because of the exhaustion issue in this case, none of the above issues have been addressed by the lower courts.

CONCLUSION

For the foregoing reasons, Certiorari should be granted in this case, and the case remanded to start all over as once case.

Submitted by:

Shaheed Madyun #75225
KMCI Inmate Mail
PO Box 282
Plymouth, WI 53073-0282

Petitioner pro se

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APPENDIX A

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

No. 08-4003

**[Submitted October 8, 2009*
Decided October 9, 2009]**

SHAHEED TAALIB'DIN MADYUN,
Plaintiff-Appellant,

v.

KIRBY LINJER,
Defendant-Appellee.

Before

FRANK H. EASTERBROOK, *Chief Judge*
RICHARD A. POSNER, *Circuit Judge*

* After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* FED. R. APP. P. 34(a)(2).

TERENCE T. EVANS, *Circuit Judge*

Appeal from the United States District
Court for the Western District of Wisconsin.

No. 08-cv-032-bbc

Barbara B. Crabb,
Chief Judge.

ORDER

Shaheed Madyun, a Wisconsin prisoner, has been engaged in ongoing and disjointed litigation with Kirby Linjer and other prison officials concerning alleged violations of his Eighth Amendment rights. His claims were rejected either at summary judgment or at trial. He now appeals and we affirm.

These proceedings have been protracted. In 2004 Madyun brought a multi-claim suit in federal court in the Eastern District of Wisconsin against Linjer and other officials at three different correctional institutions for, among other things, (1) prolonging his exposure to smoke from a fire set by another inmate in 2001, and (2) assaulting him in a cell in 2002 in order to intimidate him from filing further lawsuits. All claims were ruled on at summary judgment or were dismissed for failure to exhaust administrative remedies. In particular, the court dismissed the assault claim for failure to exhaust administrative remedies and granted the defendants summary judgment on the smoke-exposure claim.

In 2007 Madyun returned to federal court, this time in the Western District of Wisconsin, and filed a

new complaint reviving many of the claims from his previous suit, including both his assault claim and smoke-exposure claim. (Claim preclusion did not apply to the smoke-exposure claim because it was brought against a different defendant.) At screening, the court dismissed a number of defendants, but allowed Madyun to proceed on sixteen different claims against various defendants from three correctional institutions. Following this court's decision in *George v. Smith*, 507 F.3d 605 (7th Cir. 2007), the court later severed these claims into nine separate lawsuits. Of relevance to this appeal, the assault and smoke-exposure claims were consolidated into one suit.

Both claims were ultimately rejected. The district court again dismissed the assault claim because Madyun, as in the 2004 proceedings, failed to exhaust administrative remedies. The smoke-exposure claim was allowed to proceed to trial. In preparation for trial, Madyun sought the issuance of a writ of habeas corpus ad testificandum for inmate Daniel Vanderpool so that Vanderpool could testify about Linjer's actions during the fire, but the court denied the request after Madyun missed his deadline and failed to show that Vanderpool's testimony would be relevant. Madyun tried the smoke-exposure claim, and a jury returned a verdict for Linjer.

On appeal, Madyun first argues that the district court wrongly dismissed his assault claim based on a failure to exhaust administrative remedies. He maintains that the court disregarded administrative complaints and a related administrative appeal that he filed in 2002. As the court noted, however, such evidence was beyond the court's purview because the

court was bound by Judge Griesbach's finding in the 2004 action that Madyun had not shown administrative exhaustion. *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *Perry v. Sheahan*, 222 F.3d 309, 317-18 (7th Cir. 2000). Madyun now points to new administrative complaints he filed in 2006, but–as the court noted–exhaustion requires that any new filings comply with the prison's administrative rules. *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002); *Woodford v. Ngo*, 548 U.S. 81, 90-93 (2006). Madyun's post-2004 complaints failed to do so because they were not filed within 14 days of the underlying incident, as required by the relevant regulations.

Madyun next argues, regarding the adverse jury verdict on his smoke-exposure claim, that the district court wrongly denied–on relevancy grounds–his petition for a writ of habeas corpus ad testificandum for Vanderpool. Madyun asserts that Vanderpool's testimony was relevant because he proposed to contradict an affidavit from Linjer regarding Linjer's whereabouts during the fire, and thereby cast doubt on Linjer's credibility. But there actually was no conflict in their account of the events; Madyun had simply misread the affidavit provided by Linjer. It is not an abuse of discretion to preclude irrelevant testimony. *See United States v. Pless*, 982 F.2d 1118, 1127-28 (7th Cir. 1992); *Walker v. Sheahan*, 526.F.3d 973, 977-78 (7th Cir. 2008). In addition, to the extent the court also denied the request because it was filed two weeks late, it was not an abuse of discretion to deny the writ as untimely. *ITEL Capital Corp. v. Dennis Mining Supply and Equip., Inc.*, 651 F.2d 405, 407-08 (5th

Cir. 1981) (upholding denial of writ sought three days before trial).

Madyun's third argument is that the district court erred when it severed his 2007 action into nine different actions. He argues that the allegations in each of the severed suits comprised part of a larger conspiracy claim and as such should have been kept together. But we lack jurisdiction to consider this argument. "Post-severance, these suits are independent for purposes of appellate jurisdiction." *Gaffney v. Riverboat Servs. of Ind.*, 451 F.3d 424, 444 (7th Cir. 2006); *United States v. O'Neil*, 709 F.2d 361, 368-70 (5th Cir. 1983). We will not entertain a belated attempt to seek review of a judgment in an unrelated case. *O'Neil*, 709 F.2d at 368-72 (holding that if severances were improper "recourse was to challenge the district court's action on direct appeal or by mandamus" rather than "disregard the district court's action, and then later attempt to attach it in an appeal from another judgment in a different case").

Last, Madyun argues that the district court erred when it dismissed a number of defendants from the 2007 action. But that order was entered before the case was severed and is therefore also not before this court. *Id.*; *Gaffney*, 451 F.3d at 444.

AFFIRMED.

APPENDIX B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Nos. 06-1310, 08-4003

[Filed September 16, 2009]

By the Court:

SHAHEED TAALIB'DIN MADYUN,
Plaintiff-Appellant,

No. 06-1310 v.

OFFICER LEMON, Correctional,
CAROL COOK, Correctional Officer,
VAL RYAN, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin

No. 04 C 343

William C. Griesbach, Judge.

SHAHEED TAALIB'DIN MADYUN,
Plaintiff-Appellant,

No. 08-4003 v.

KIRBY LINJER, Lieutenant,
Defendant-Appellee.

Appeal from the United States District Court for the Western District of Wisconsin

No. 3:08-cv-00032-bbc

Barbara B. Crabb,
Chief Judge

The following is before the court:

1. **NOTICE OF, AND MOTION TO RECALL MANDATE ISSUED ON JULY 24, 2006 IN CASE NO. 06-1310 AFFIRMING THE DISTRICT COURT OF WISCONSIN IN NO. 04-C-343, IN PREVIOUSLY FILED MADYUN V. COOK ET AL**, filed on August 31, 2009, by the pro se appellant.

2. **NOTICE OF, AND MOTION FOR PERMISSION TO AMEND BRIEF APPENDIX WITH DOCUMENTS WITHHELD BY THE PRISON AUTHORITIES ATTEMPTING TO UNDERMINE AN EFFECTIVE BRIEF BEING FILED IN THIS CASE THAT WOULD PROVE**

MISCONDUCT AND BAD FAITH, filed on August 31, 2009, by the pro se appellant.

Upon consideration of the request to recall the mandate, **IT IS ORDERED THAT** the motion is **DENIED**.

Upon consideration of the request to amend the appendix, **IT IS ORDERED THAT** the motion is **DENIED** as unnecessary. The clerk of this court accepted a supplemental appendix for filing on August 31, 2009.

APPENDIX C

UNITED STATES DISTRICT COURT
Western District of Wisconsin

Case No.: 08-cv-032-bbc

[Filed October 23, 2008]

SHAHEED TAALIB'DAN MADYUN,	)
	)
Plaintiff,	)
	)
v.	)
	)
LT. KIRBY LINJER,	)
	)
Defendant.	)
	)

JUDGMENT IN A CIVIL CASE

This action came for consideration before the court with U. S. District Judge Barbara B. Crabb presiding. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Pursuant to verdict of the jury, this case is dismissed against defendant with prejudice.

JOEL TURNER
Joel Turner, Acting Clerk

/s/ M. Hardin
by Deputy Clerk

10/23/08
Date

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

No. 08-cv-32-bbc

[Filed May 21, 2008]

SHAHEED TAALIB'DIN MADYUN,

Plaintiff,

v.

LT. KUSTER;
LT. KIRBY LINJER; and
JOHN DOE,

Defendants.

ORDER

This is one of six separate lawsuits plaintiff chose to pursue in this court after I determined that his multi-claim, multi-defendant complaint in Madyun v. Muraski, 07-cv-318-bbc, violated Fed. R. Civ. P. 20. In this severed lawsuit, plaintiff is proceeding on the following claims: 1) defendants Kuster, Kirby Linjer and a John Doe officer violated plaintiff's Eighth Amendment rights when they assaulted him

in his cell in February 2002; 2) in June 2001, defendant Kuster violated plaintiff's First Amendment rights by confiscating his watch in retaliation for plaintiff's work as a jailhouse lawyer; and 3) in November 2001, defendant Linjer violated plaintiff's Eighth Amendment rights by prolonging plaintiff's exposure to smoke from a fire another inmate set in plaintiff's unit. Presently before the court is defendants' motion for partial summary judgment, in which defendants contend that plaintiff failed to exhaust his administrative remedies with respect to his claims that defendants Kuster, Linjer and Doe assaulted him and that Kuster confiscated his watch in retaliation for his legal work. Also before the court is plaintiff's April 30, 2008 "Motion Seeking Delay in Ruling on Summary Judgment and Dismissal of Case against Defendant Until All Interrogatories and Discovery Demands Have Been Answered by Defendants" (Dkt. #39), plaintiff's April 30, 2008 "Request to Consider Submitted Exhibits" (Dkt. #40), and plaintiff's May 3, 2008 "Motion in Agreement with Defendants to Allow a Rewrite of the Three Briefs" (Dkt. #42). Because plaintiff's first and last motions each are aimed at delaying resolution of defendants' motion for summary judgment, I will address them together.

In his motion "Seeking Delay in Ruling...", plaintiff asks that the court permit him to submit additional documents in opposition to defendants' motions for summary judgment after he receives responses to interrogatories he sent to defendants on April 8, 2008, and a request for production of documents he sent to defendants on April 14, 2008.

Plaintiff's "Motion in Agreement with Defendants to Allow a Rewrite of the Three Briefs" must be put in context. Defendants have filed motions for summary judgment on the merits of plaintiff's claims in case nos. 07-cv-318-bbc and 08-cv-30-bbc, and motions for summary judgment raising the defense of failure to exhaust in this and three of plaintiff's other pending cases, 08-cv-31-bbc, 08-cv-33-bbc and 08-cv-34-bbc. Plaintiff has taken a scattershot approach to responding to these motions. Instead of limiting his responses to the particular issues before the court in each case, plaintiff has filed a variety of documents bearing the case captions of all six cases, including a 27-page brief in opposition to the several motions for summary judgment in which he jumbles together his arguments relating to each motion. In addition, he has submitted a total of 267 pages of unmarked, unorganized exhibits purportedly supporting his arguments against summary judgment in all of his cases. On May 1, 2008, defendants in case nos. 07-cv-318-bbc, 08-cv-30-bbc and 08-cv-31-bbc (but not in this case or case nos. 08-cv-33-bbc or 08-cv-34-bbc), moved to strike plaintiff's 27-page brief because of its confusing mix of relevant and irrelevant arguments. In his "Motion in Agreement...," plaintiff admits that his submissions are difficult to understand. Thus, he asks for permission to spend another ninety days rewriting his briefs "in order to get it right." Both of plaintiff's requests will be denied.

Plaintiff has had more than ample opportunity to collect and organize documentation of his exhaustion of administrative remedies with respect to the two claims at issue in defendants' motion for summary judgment in this case. Originally, defendants sought

dismissal of plaintiff's unexhausted claims in a motion to dismiss filed on March 5, 2008. On March 7, 2008, I converted the motion to a motion for summary judgment and gave plaintiff until March 21, 2008, in which to oppose it. Later, in response to a motion from plaintiff, I extended his deadline to March 28, 2008. Not utilizing the extension, plaintiff filed his opposing brief, together with an affidavit and 45 pages of documents on March 21, 2008. On April 4, 2008, plaintiff wrote a letter saying he had just received access to additional documents that would help him prove he had exhausted his administrative remedies in this case and in case nos. 08-cv-33-bbc and 08-cv-34-bbc. Curiously, although he asked for permission to submit these documents to the court, plaintiff did not include them with his letter. Nevertheless, in an order dated April 8, 2008, I granted plaintiff's request, telling him he could have until April 18, 2008, in which to submit to the court and counsel for defendants authenticated copies of any additional documents he believed would prove that he had exhausted his administrative remedies. Plaintiff took this opportunity to submit a new 27-page brief (the one defendants ask be stricken in cases other than this one) and another 222 pages of documents, the vast majority of which have nothing to do with this case. Plaintiff's failure to begin discovery sooner and his strategic decision to combine his responses to defendants' motions in documents that are cluttered with irrelevant material will not be rewarded with yet another delay and an opportunity to pile even more documents on the heap of exhibits plaintiff has already provided.

In plaintiff's "Request to Consider Submitted Exhibits" (Dkt. #40), plaintiff acknowledges that in case no 07-cv-318-bbc, the defendants have asked that certain of plaintiff's evidentiary materials (which have been submitted in all of his cases) be ignored because they are unauthenticated. In an effort to cure the defective submissions, plaintiff now has filed an affidavit (Dkt. #41) in which he avers that "all documents submitted by him were exact copies of the original documents on file and in his personal files." In a document titled "Response to Admissibility of Plaintiff's Documents," defendants concede that they have already filed in support of their motion "the vast majority" of the documents plaintiff submitted and, therefore, do not object to the admissibility of those documents. They note, however, that other documents not a part of their earlier submissions are irrelevant to the claims in this case with the possible exception of two documents, a June 4, 2002 letter from plaintiff to Warden Judy Smith and a group offender complaint dated February 13, 2007. For the purpose of deciding defendants' motion for summary judgment, I have excluded from consideration all of plaintiff's submissions that are irrelevant to the issues in this case. Moreover, whether I accept as properly authenticated plaintiff's June 4, 2002 letter to Judy Smith and his February 13, 2007, these documents are insufficient to show that plaintiff exhausted his administrative remedies on the claims at issue in defendants motion. Therefore, I will grant plaintiff's "Request to Consider Submitted Exhibits."

I turn then to defendants' motion for summary judgment. The following facts are drawn from the allegations in plaintiff's complaint and the relevant

exhaustion documents the parties have submitted in connection with the present motion. In addition, I have taken judicial notice of orders entered in the public record of a case plaintiff filed in the Eastern District of Wisconsin, and subsequently appealed to the Court of Appeals for the Seventh Circuit, Madyun v. Lemon, 04-cv-343-WCG.

UNDISPUTED FACTS

Sometime in 2004, plaintiff filed a civil action in the Eastern District of Wisconsin, Madyun v. Lemon, 04-cv-343-WCG, in which he alleged that defendants Linjer and Kuster and a third prison official had beaten him up on February 27, 2002. In an order entered in that case on March 30, 2005, Judge Griesbach held that plaintiff had not exhausted his administrative remedies, 1:04-cv-343-WCG, dkt. #72 (March 30, 2005), aff'd sub nom, Madyun v. Cook, 204 Fed. Appx. 547, 548 2006 WL 2053466, 1 (7th Cir. 2006).

Apparently in response to the dismissal of his appeal in case no. 04-cv-343-WCG, on October 11, 2006, plaintiff filed a new inmate complaint claiming among other things that on February 27, 2002, three officers entered his cell wearing black suits and ski masks and beat him viciously until he pretended to pass out, at which time the officers discussed killing plaintiff and ultimately decided not to do so. On October 12, 2006, plaintiff's complaint was returned to him for his failure to meet the filing requirements for an inmate complaint. In particular, Donna Liebergen, an institution complaint examiner, advised plaintiff

> This complaint is being returned as it contains multiple issues. You mention the incident with staff in a seg cell, lack of medical attention, ICE cover up. You also need to legibly sign complaints using the first and last name you were committed to the department with. If you re-submit this complaint, please clearly specify your one issue and ensure your signature is legible and includes your first and last name. You are also reminded to file within the time limits per DOC 310.

Subsequently, on October 16, 2006, plaintiff received an "ICE Receipt" assigning complaint number GBCI-2006-30524 to his complaint. On October 18, 2008, a Jennifer Delvaux issued a formal "ICE Rejection" of the complaint stating,

> Pursuant to DOC 310.11(5)(d), the "inmate submitted the complaint beyond 14 calendar days from the date of the occurrence giving rise to the complaint and provides no good cause for the ICE to extend the time lines." The complainant lists the date of occurrence as 02/27/02. Complaint also contains multiple issues.

Plaintiff sought review of the rejected complaint on October 18, 2006. A "reviewing authority" acknowledged receipt of plaintiff's appeal on October 23, 2006. On that same day, Warden Judy Smith issues a decision, holding that plaintiff's complaint had been appropriately rejected "in accordance with DOC 310.11(5)."

The Department of Corrections has no record of plaintiff's ever having filed an inmate complaint or appeal concerning his assertion that in June 2001, defendant Kuster confiscated his watch in retaliation for plaintiff's work as a jailhouse lawyer.

OPINION

Under 42 U.S.C. § 1997e(a), a prisoner must exhaust all available administrative remedies before filing a lawsuit in federal court. This means that the prisoner must "properly take each step within the administrative process," Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002), which included following instructions for filing the initial grievance, Cannon v. Washington, 418 F.3d 714, 718 (7th Cir. 2005), as well as filing all necessary appeals, Burrell v. Powers, 421 F.3d 282, 284-85 (7th Cir. 2005), "in the place, and at the time, the prison's administrative rules require." Pozo, 286 F.3d at 1025. Thus, if prison officials reject a grievance for failing to comply with a procedural requirement and they decline to address the merits of the grievance, the general rule is that the prisoner has not exhausted his administrative remedies and any lawsuit the prisoner later files must be dismissed. Dixon v. Page, 291 F.3d 485 (7th Cir. 2002); Lewis v. Washington, 300 F.3d 829 (7th Cir. 2002); Pozo, 286 F.3d at 1025. Defendants have the burden to prove that plaintiff failed to comply with § 1997e(a). Jones v. Bock, – U.S. –, 127 S. Ct. 910 (2007).

Wisconsin inmates have access to an administrative grievance system governed by the procedures set out in Wis. Admin. Code §§ DOC 310.01-310.18. Under these provisions, prisoners

start the complaint process by filing an inmate complaint with the institution complaint examiner. An institution complaint examiner may investigate inmate complaints, reject them for failure to meet filing requirements or recommend to the appropriate reviewing authority that they be granted or dismissed. Wis. Admin. Code § DOC 310.07(2). However, if the institution complaint examiner makes a recommendation that the complaint be granted or dismissed on its merits, the appropriate reviewing authority may dismiss, affirm or return the complaint for further investigation. Wis. Admin. Code § DOC 310.12. If an inmate disagrees with the decision of the reviewing authority, he may appeal to a corrections complaint examiner, who is required to conduct additional investigation where appropriate and make a recommendation to the Secretary of the Wisconsin Department of Corrections. Wis. Admin. Code § 310.13. Within ten working days following receipt of the corrections complaint examiner's recommendation, the Secretary must accept the recommendation in whole or with modifications, reject it and make a new decision or return it for further investigation. Wis. Admin. Code § DOC 310.14.

Under some circumstances an inmate complaint may be rejected before it is passed along to a reviewing authority. These include instances in which the complaint is untimely. Wis. Admin. Code § DOC 310.11(5)(d). When an inmate's complaint is rejected, the prisoner may appeal the rejection to the appropriate reviewing authority (usually the warden), who may review only "the basis for the rejection of the complaint." Wis. Admin. Code § DOC 310.11(6). If an inmate appeals the rejection of his

complaint to the warden and the warden agrees that the rejection is inappropriate, the inmate's complaint would be returned to the institution complaint examiner for review on the merits. At that point, the inmate would have to appeal any unfavorable decisions using the procedures described in Wis. Admin. Code § 310 before a federal court could find that he exhausted his administrative remedies.

In determining whether plaintiff exhausted his administrative remedies with respect to his claim that defendants Kuster and Linjer and a John Doe defendant beat him up on February 27, 2002, I must accept as fact that plaintiff did not exhaust his administrative remedies before 2004, when he raised the same claim in Madyun v. Lemon, 04-cv-343-WCG. Judge Griesbach has ruled that plaintiff failed to exhaust his administrative remedies on this claim before he filed his 2004 action, and the court of appeals has agreed with this determination. Those determinations cannot be relitigated in this case. Meyer v. Rigdon, 36 F.3d 1375, 1379 (7th Cir. 1994) (issue preclusion applies when same party lost on same issue in previous case). In one of his multiple supplements to this brief, dkt. #28, plaintiff argues that Judge Griesbach's decision has no effect on this case because the case in the Eastern District was dismissed "because [plaintiff] misidentified his exhibits." This is a brazen misrepresentation of Judge Griesbach's decision in which he painstakingly considered each of the documents that plaintiff submitted to show administrative exhaustion. At the conclusion of this discussion, the court stated that "there is no evidence that Madyun exhausted his administrative procedures." Madyun v. Lemon, No. 04-C-343 (Order dated December 27,

2005). Thus, the only question before this court with respect to plaintiff's first claim is whether he exhausted his administrative remedies sometime after 2004. I conclude he did not.

Plaintiff's 2006 inmate complaint was rejected as untimely. When plaintiff appealed the rejection to the warden, the warden upheld the institution complaint examiner's action. Plaintiff has pointed to no evidence in the record to show that he presented his claim in the place, at the time, and in the manner the prison's administrative rules require. Therefore, defendants have met their burden to show that plaintiff failed to exhaust his administrative remedies with respect to his claim that defendants Kuster and Linjer and a John Doe beat him up on February 28, 2002. The claim will be dismissed without prejudice to plaintiff's refiling it at a later time if he succeeds in properly presenting the claim through the administrative grievance process. (Although it appears highly unlikely that plaintiff will be able to complete the grievance process at this late date, dismissals for failure to exhaust are always without prejudice. Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004).)

Also, with respect to plaintiff's retaliation claim against defendant Kuster, defendants have been unable to find any record of plaintiff's having raised this claim in a properly filed grievance and plaintiff has not provided evidence that he did. Indeed, plaintiff does not argue in his brief that defendants are mistaken on this point. Therefore I conclude that this claim, too, must be dismissed without prejudice.

ORDER

IT IS ORDERED that

1. Plaintiff's "Motion Seeking Delay in Ruling on Summary Judgment and Dismissal of Case against Defendant Until All Interrogatories and Discovery Demands Have Been Answered by Defendants" (Dkt. #39) is DENIED.

2. Plaintiff's "Motion in Agreement with Defendants to Allow a Rewrite of the Three Briefs (Dkt. #42) is DENIED.

3. Plaintiff's "Request to Consider Submitted Exhibits" (Dkt. #40) is GRANTED.

4. Defendants' motion for partial summary judgment is GRANTED. Plaintiff's claims that defendants Kuster, Kirby Linjer and a John Doe officer violated plaintiff's Eighth Amendment rights when they assaulted him in his cell in February 2002 and that in June 2001, defendant Kuster violated plaintiff's First Amendment rights by confiscating his watch in retaliation for plaintiff's work as a jailhouse lawyer are DISMISSED without prejudice for plaintiff's failure to exhaust his administrative remedies.

5. This action is DISMISSED as to defendant Lt. Kuster and John Doe.

Entered this 21st day of May, 2008.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Case No. 04-C-343

[Filed December 27, 2005]

SHAHEED TAALIB'DIN MADYUN, et al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
LEMON, et al.,	)
	)
Defendants.	)
	)

DECISION AND ORDER

In an order dated March 30, 2005, I granted the defendants' motion for summary judgment as to most of the plaintiffs' claims because such claims had not been exhausted via the complaint and appeals process of the Oshkosh Correctional Institution, the prison where Madyun was serving his sentence. Three claims remain outstanding and will be addressed herein. First, in the March 30 decision I withheld ruling on Madyun's seventh claim because the documentary evidence did not clearly show, either way, whether he had exhausted

that claim. Second, Madyun's ninth claim, which involved smoke in his room, was not at issue in the March 30 decision because the state conceded it had been exhausted. Third, Claim 11 on behalf of Madyun and inmate Larry Kiser was dismissed only as to Madyun as it appeared Kiser had exhausted his remedies. In addition, Madyun filed a motion for reconsideration of my dismissal of his eighth claim, claiming that evidence in the record supports a finding that he exhausted that claim. Based on the evidence now submitted in the present motion for summary judgment, I conclude that all three of the remaining claims should be dismissed and that the motion for reconsideration should be denied.

1. Claim 7

Claim 7 alleged conspiracy, retaliation and cruel and unusual punishment. Among other things, Madyun claimed several guards dressed in black entered his room and beat him one night, all in an effort to get him to stop his lawsuits against them. In the March 31, 2005 order, I concluded that an inmate complaint filed by Madyun (Exhibit 39) could constitute evidence of the exhaustion of his remedies: "Exhibit 39, however, is an inmate complaint that does seem to recite many of the same facts as Claim 7 of the complaint."[†] I also found that exhibit 40, which was a March 12, 2002 letter from Warden Judy Smith, could constitute evidence of a response to Madyun's request for review of the ICE's rejection of his complaint (Exhibit 39). Exhibit 39 is indeed very similar to the claim alleged in this case

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[†] The exhibits referred to are Madyun's own exhibits, at docket #66, which he filed on January 3, 2005.

and could be based on the same conduct. The question, however, is whether Madyun appealed the decision rejecting his complaint, which is part of the exhaustion process. *See, e.g., Gidarisingh v. McCaughtry*, 2005 WL 2428155, *9 (E.D. Wis. 2005). My earlier decision left open the possibility that Exhibit 40–the letter from Smith–was evidence of Madyun's appeal. It is now clear, however, the Exhibit 40 is actually a response to other, unrelated, correspondence from Madyun dating back to February 26, 2002, and thus it is *not* a response to Exhibit 39, his prisoner complaint. (DPFOF ¶¶ 26-28; Smith Aff., Ex. B.) For instance, Exhibit 40 refers to "your letter concerning your allegations of due process allegations," (sic) whereas Exhibit 39 was a prisoner complaint, not a letter. Nor did it cite any "due process" violations (at least in the segment provided in Madyun's exhibits). Moreover, Exhibit 40 makes reference to a case numbered 02-CV-00043-C, filed in the Western District, which is something that is *not* found referenced in Exhibit 39. Instead, the reference to case 02-CV-00043-C shows up in Madyun's unrelated February 26 letter. Based on these inconsistencies, it would make no sense to construe Exhibit 40 as being a response to Exhibit 39.

Madyun's only response to this is that the March 12 letter (Exhibit 40) *must* have been a response to his appeal because he received an identical letter from Smith dated March 8. (Madyun Aff., Docket #91, at 12.) Why would she write two identical letters, he asks? The only explanation, in his view, is that the one of the letters was actually directed at the issues involved in claim 7. But this argument cannot escape the same issues noted earlier. Both

letters address case 02-CV-00043-C, which was not raised as an issue in his inmate complaint (Exhibit 39). Both refer to a "letter" rather than a complaint. Accordingly, neither of the letters can be construed as having anything to do with the issues raised by claim 7.

Without Exhibit 40, Madyun has no evidence that he ever appealed the rejection of his complaint. As I noted in my previous order, "[A] prisoner who does not properly take each step within the administrative process has failed to exhaust state remedies, and thus is foreclosed by § 1997e(a) from litigating." *Pozo v. McCaughtry*, 286 F. 3d 1022, 1024 (7th Cir. 2002). "To exhaust remedies, a prisoner must file complaints and appeals in the place, and at the time, the prisons' administrative rules require." *Id.* at 1025. The prison also has no record of any appeal. (Second Smith Aff., ¶ 8.) Accordingly, because there is no evidence that Madyun exhausted his administrative procedures, § 1997(e) bars further consideration of claim 7.

2. Claim 9

What remains of Claim 9 involves Madyun's allegation that an inmate near his cell started a fire and that the prison guards took over forty-five minutes to respond. This delayed response, which continued for a total of two hours, was an intentional effort to expose Madyun to the smoke, the denouement of the guards' scheme to "commit murder with the false justification that Madyun died of natural causes." (Compl. ¶ 125.) The claim is brought against defendants Kuster, Jones and

Smith, although nowhere in the complaint does Madyun explain their involvement.

The complaint was silent on their involvement, and so are his present efforts. His response brief merely relies on my screening order as if that order had decided that they *were* responsible. That is not the case. Instead, it was Madyun's responsibility to come forward with evidence showing how each defendant is involved in the alleged constitutional violation, especially when the claim is so implausible on its face. Each of the three defendants states that they were not even at the prison at the time of the fire Madyun alleges, and it is therefore undisputed that their involvement is nil. Accordingly, summary judgment on claim 9 is appropriately granted in the defendants' favor.

3. Claim 11

Madyun and plaintiff Larry Kiser were initially allowed to proceed on Claim 11 which alleged that their Eighth Amendment rights were violated when defendants Kaplan, Keller, Schwochert, Smith, Pierce and Schroeder "flooded the vents with gas in an attempt to cause death, or other permanent harm to the inmates." (May 17, 2004 Order at 15.) In my March 30, 2005 order I granted the defendants' motion to dismiss Madyun's claim for failure to exhaust, but concluded that Kiser's claim remained because he had exhausted his administrative remedies. Defendants now seek summary judgment on Kiser's claim on the ground that there is no evidence to support it.

In their proposed findings of fact they point out that an addition to the Segregation Unit was under construction at the time in question and construction-related fumes and odors came into the building through the air handlers on occasion. The fumes were mild, however, and staff who worked closer to the site than inmates did not even notice them. Had they been aware of a problem with fumes, staff would have started a hallway fan which would have solved the problem. Moreover, none of the inmates complained until Kiser filed his complaint and he never sought medical treatment for it. (DPFOF ¶¶ 29-35.) These facts are uncontested. Although Kiser filed an affidavit supporting Madyun's version of claim 7, he has not responded to the defendants evidence that claim 11 is without support. Accordingly, summary judgment will be granted as to this claim also.

4. Motion for Reconsideration

Madyun has also filed a motion for reconsideration of my dismissal of his eighth claim, in which he alleged a conspiracy to confine him illegally, fraud, falsification of records, etc. The claim was dismissed for failure to exhaust, by Madyun now claims that I should reconsider the dismissal because he inadvertently failed to cite evidence that he actually did exhaust these claims. The evidence he now points to consists of a series of rambling inmate complaints that show, at best, he may have exhausted the rev ew process regarding the prison's failure to timely count for a check he received in the mail. The prison's failure to immediately put the funds in his account, he alleged, caused him to be written up because he later attempted to make

purchases at the canteen while having no funds in his account.

Upon review, it does appear that Madyun has exhausted at least part of his eighth claim, namely, the part set forth in paragraph 103 of his complaint. But now that the matter has been clarified by the documents he has cited, it is evident that the underlying claim failed as a matter of law from the outset. The gist of his claim is that the prison had a duty to deposit funds from a check he received into his account as soon as the check arrived in the mail. To do otherwise, he claims, was fraud and, assuredly, part of some larger conspiracy to prevent him from buying stamps, which in turn stifled his litigation efforts. What happened here was that Madyun received a receipt for a check on a Thursday, but Liz Lemery "postdated" the check to indicate it was received on the following Monday. (See Pltf. Ex. 57e-58.) The postdating occurs because the prison does not post funds on Fridays and its "bank" is closed on weekends. From these facts, I simply cannot discern any Constitutional violation. Indeed a two-business-day delay in the availability of funds is the sort of experience that individuals outside of prisons encounter on a daily basis. Madyun appears to allege, of course, that the prison's stated reasons for all of this are a sham, but that is not supported by anything in the record or in the evidence he cites. The facts simply do not make out a violation of the Constitution. Accordingly, the claim, inasmuch as it was exhausted, is dismissed on its merits for failure to state a claim upon which relief may be granted. To the extent the motion for reconsideration seeks injunctive relief, it is denied for the same reasons.

In conclusion, the plaintiffs' motions are denied, the defendants' motion for summary judgment is granted as to all claims, and the case is dismissed.

SO ORDERED this 27th day of December, 2005.

/s/ William C. Griesbach
WILLIAM C. GRIESBACH
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Case No. 04-C-343

[Filed November 29, 2004]

SHAHEED TAALIB'DIN MADYUN, et. al., Plaintiff,	)
v.	)
LEMON, et al., Defendant.	)

ORDER

Plaintiffs Shaheed Taalib'din Madyun, Larry Kiser and Betty Lou Madyun, appearing pro se, filed this action on April 7, 2003, alleging violations of their civil rights pursuant to 42 U.S.C. §§ 1983 and 1985. Shaheed Madyun and Kiser are serving state sentences at Green Bay Correctional Institution. Betty Lou Madyun is Shaheed Madyun's wife, but she is not a prisoner. In their voluminous complaint, the plaintiffs asserted twelve separate causes of action and, after this court's screening of the complaint pursuant to 28 U.S.C. § 1915(a), were allowed to proceed on ten of the original claims.

Currently before me is the defendant's motion for partial dismissal pursuant to Fed. R. Civ. P. 12(b)(6). The defendants' argue that all but one of Shaheed Madyun's claims should be dismissed on the ground that he has failed to exhaust his administrative remedies. Defendants also seek dismissal of Count 10 of the complaint, which asserts an Eighth Amendment claim of cruel and unusual punishment on behalf of Betty Lou Madyun. Defendants contend that because Betty Lou is not a prisoner serving a sentence, the Eighth Amendment does not apply.

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the complaint to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). The essence of a Rule 12(b)(6) motion is not that the plaintiff has pleaded insufficient facts; it is that even assuming all of his facts are accurate, he has no legal claim. *Payton v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 184 F.3d 623, 627 (7th Cir. 1999). Dismissal of an action under such a motion is warranted if the plaintiff can prove no set of facts in support of his claims that would entitle him to relief. *Scott v. City of Chicago*, 195 F.3d 950, 951 (7th Cir. 1999); *see Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Defendants' motion as to Betty Lou Madyun's Eighth Amendment claim will be granted to the extent that count 10 asserts an Eighth Amendment claim. Because it is clear from the complaint that Betty Lou is not a prisoner, the Eighth Amendment does not apply. *Whitley v. Albers*, 475 U.S. 312, 318-19 (1986); *Kinney v. Indiana Youth Center*, 950 F.2d 462, 465 (7th Cir. 1991). Thus, that portion of Count 10 asserting such a claim must be dismissed. But I

decline to dismiss Ms. Madyun's claim in its entirety. Count 10 incorporates paragraph 112 of the complaint, which alleges that Betty Lou Madyun:

> wrote a letter to the warden on what she personally observed was physically done to her husband Mr. Shaheed Taalib'din Madyun; she described the busted wrists and asked warden Judy Smith to do something about the violent action of Staff. Keller and Kuster decided to punish Mrs. Madyun by twisting the words of her letter and attributing them to being coerced by Mr. Shaheed Madyun; using her letter to justify punishing her husband; after the letter incident she was repeatedly harassed by officers; they placed her life in danger by attempting to cause her to have a heart attack.

(Compl. ¶112.) Paragraph 126 alleges that this conduct "violated Mrs. Betty Lou Madyun's Eighth Amendment rights to be free from cruel and unusual punishment." As noted above, the fact that Betty Lou is not a prisoner precludes application of the Eighth Amendment. But I am unable to say that based upon the allegations in paragraph 112, Betty Lou has no claim against the defendants she has named. The allegation that she was repeatedly harassed by the officers name in Count 10 and that they placed her life in danger by attempting to cause her to have a heart attack, while vague and indefinite as to the time, place and manner in which this attempt was allegedly made, is sufficient to state a claim under the liberal pleading rules that apply in federal courts, especially for pro se litigants. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972);

Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002). Accepting the allegation as true, which I am required to do at this stage of the proceeding, Ms. Madyun might have a due process claim or perhaps a state law claim for intentional infliction of emotional distress over which the court might have supplemental jurisdiction. For this reason, I decline to dismiss Count 10 in its entirety.

As for defendants' argument that all but one of Madyun's claims should be dismissed for failure to exhaust, I conclude that the resolution of this issue would require consideration of facts that are outside the scope of the pleadings and, for this reason, defendants' motion to dismiss cannot be granted. Although Fed. R. Civ. P. 12(b) authorizes the court to treat a motion to dismiss under that Rule as a motion for summary judgment pursuant to Fed. R. Civ. P. 56 when matters outside the pleadings are considered, I am unable to proceed in that fashion at this time because of the confused state of Madyun's response. I will therefore allow him a further opportunity to respond.

There is no dispute that both Madyun (from now on, this means Shaheed) and Larry Kiser, as state prisoners under sentence for criminal conduct, were required to exhaust their administrative remedies within the prison system before bringing suit in federal court under § 1983. 42 U.S.C. § 1997e(a); *Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 537 (7th Cir. 1999). The defendants request that I take judicial notice of the numerous Offender Complaints that plaintiffs filed pursuant to the Inmate Review System, Wis. Admin. Code. Ch. DOC 310, for the six year period preceding the filing of

this action. (The statue of limitations for an action on § 1983 is six years. *Gray v. Lacke*, 885 F.2d 399, 409 (7th Cir. 1989).) They then argue that the absence of Offender Complaints corresponding to each of the claims set forth in the complaint establishes plaintiffs' failure to exhaust. Because the only count that corresponds to one of the Offender Complaints filed by Madyun is count 9, defendants conclude he failed to exhaust as to the remaining claims and they must be dismissed. (Def.'s Br. At 4.)

But aside from the uncertainty as to whether Offender Complaints are the kinds of documents that may be judicially noticed, see Fed. R. Evid. 201, the complaints only show what Madyun did file. The crucial fact upon which defendants' motion is based is that Madyun filed no other complaints. To determine this fact, however, I must go outside the records themselves. In addition, exhaustion is required only where administrative remedies are available. *Johnson v. Litscher*, 260 F.3d 826, 829 (7th Cir. 2001) ("For the exhaustion requirement to apply, there must be some administrative remedy to exhaust."). Madyun claims that he was prevented from filing inmate complaints by some of the defendants, thereby making the administrative remedy unavailable. Furthermore, an inmate is deemed to have exhausted his administrative remedy "when the time limits for the prison's response set forth in the prison Grievance Procedures have expired." *Underwood v. Wilson*, 151 F.3d 292, 295 (5th Cir. 1998). *See also Lewis v. Washington*, 300 F.3d 829, 833 (7th Cir. 2002) (adopting same). Madyun claims that as to some of his grievances, the prison administration failed to respond within the time allowed, thereby rendering

the administrative remedy "unavailable" as these claims also. Finally, and somewhat inconsistently with his claim that defendants prevented him from filing, Madyun goes on to claim that in fact he did file grievances and has submitted a fifteen-page "Offer of Proof Concerning Exhaustion" to which is attached some two hundred pages of unmarked exhibits to establish just that fact.

Thus, Madyun claims that he has exhausted his administrative remedies. The problem with Madyun's response, however, is that his allegation that he was prevented from filing Offender Complaints by the conduct of one of one of the defendants appears in the body of a brief, as opposed to an affidavit or declaration, and he does not adequately identify the documents that he claims show that he did in fact exhaust his administrative remedies or that the prison failed to respond to his complaint in a timely manner. Referring to documents as "(Complaint dated 4/18/04); Conduct Report #1311435, Conduct Report #1395503 and complaint OSCI-2001-29764; Complaint dated 01/07/02; and Complaint CCI-2001-5275; Complaint dated 04/14/02; Complaint OSCI-2001-11357" (Pl.'s Br. In Opp. at 15-16) is not sufficient when the record contains over two hundred unmarked and unnumbered pages. "Judges are not like pigs, hunting for truffles buried in briefs." *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991).

I conclude that defendants' motion to dismiss should be treated as a motion for partial summary judgment as to eight of the remaining claims on the ground that the inmate plaintiffs have failed to exhaust their administrative remedies as they were

required to do under 42 U.S.C. § 1997e. To avoid dismissal, Madyun and Liser must file a response that sets forth as to each claim at issue, in affidavit form, the evidence that supports their contention that they did in fact exhaust their administrative remedies or why they are excused from doing so. Documents upon which they rely and to which they refer must be separately marked as exhibits and clearly identified. Plaintiffs may also file a brief in support of their position, but their response should be limited to the issue of exhaustion; the merits of the claims may not be addressed until the question of exhaustion has been resolved. The additional summary judgment procedures set out in Civil L.R. 56.2 shall not apply, but the plaintiffs are hereby put on notice that failure to specifically respond to defendants' evidentiary showing may result in dismissal of the eight claims at issue.

IT IS THEREFORE ORDERED that defendants' motion to dismiss is granted in part. Any Eighth Amendment claim on behalf of Betty Lou Madyun is dismissed for failure to state a claim upon which relief may be granted. That portion of the motion seeking dismissal of eight of the remaining counts for failure to exhaust administrative remedies is converted to a motion for summary judgment pursuant to Fed. R. Civ. P. 56. A copy of Rule 56 shall be attached to this order for Madyun's and Kiser's information. Madyun and Kiser shall file a response to defendants' motion in accordance with the directions set forth above on or before January 3, 2005. Defendants shall file their reply on or before January 23, 2005.

Dated this 29th day of November, 2004.

/s/ William C. Griesbach
William C. Griesbach
United States District Judge

APPENDIX G

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

No. 08-4003

[Filed December 15, 2009]

SHAHEED TAALIB'DIN MADYUN,
Plaintiff-Appellant,

v.

KIRBY LINJER, Lieutenant,
Defendant-Appellee.

Before

FRANK H. EASTERBROOK, *Chief Judge*
RICHARD A. POSNER, *Circuit Judge*
TERENCE T. EVANS, *Circuit Judge*

Appeal from the United States District Court for the Western District of Wisconsin

No. 08 C 32

Barbara B. Crabb, *Chief Judge*

ORDER

On October 28, 2009, the plaintiff-appellant filed a petition for rehearing and petition for rehearing en banc. All the judges on the panel have voted to deny a rehearing, and none of the judges in active service have requested a vote on the petition for rehearing en banc. The petitions for rehearing and rehearing en banc are therefore DENIED.

APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

No. 07-C-318-C

[Filed December 28, 2007]

SHAHEED TAALIB'DIN MADYUN,

Plaintiff,

v.

KENNETH KELLER; ANGIE WOOD; LT. KUSTER; LT. KIRBY LINJER; CO. II CAROL COOK; PETER ERICKSON; CAPT. BRANT; LT. LAMBRECHT; WILLIAM POLLARD; DR. STEVEN SCHMIDT; CAPT. BRUCE MURASKI; PHIL KINGSTON; DON STRAHOTA; CAPT. O'DONOVAN; SGT. VOSS; SGT. LEHMAN; SIEDSCHLAG; and CAPT. WIERENGA,

Defendants.

ORDER

Plaintiff is proceeding in this case on the following claims:

1. In June 2001, while plaintiff was confined at the Oshkosh Correctional Institution, defendant Kuster confiscated plaintiff's watch in retaliation for plaintiff's work as a jailhouse lawyer and his complaints about prison conditions.

2. In September 2001, also while plaintiff was confined at the Oshkosh Correctional Institution, defendant Carol Cook put "medicine or poison" in plaintiff's food in violation of his Eighth Amendment rights. In March 2002, defendant Cook violated plaintiff's Eighth Amendment rights again when she put handcuffs on plaintiff so tightly that it caused his wrists to bleed and when she refused to seek medical treatment for him. Cook's March 2002 actions also violated plaintiff's right of access to the courts because they were taken to retaliate against plaintiff for his jailhouse lawyering activities.

3. Also in September 2001, defendant Angie Wood put plaintiff in segregation in retaliation for his activities as a jailhouse lawyer and because of his complaints about prison conditions. This same defendant violated plaintiff's Eighth Amendment rights in October 2001, when she failed to obtain medical care for plaintiff after learning the plaintiff had ingested pieces of razor blades that had been hidden in a piece of pie.

4. In November 2001, defendant Linjer violated plaintiff's Eighth Amendment rights by prolonging his exposure to smoke from a fire another inmate set in plaintiff's unit.

5. In February 2002, defendants Kuster, Kirby Linjer and a John Doe officer violated plaintiff's

Eighth Amendment rights when they assaulted plaintiff in his cell.

6. In March 2002, defendants Linjer and Kuster and defendant Kenneth Keller issued a conduct report against plaintiff and sentenced him to segregation because of his activities as a jailhouse lawyer and his complaints about prison conditions.

7. In June 2002, shortly after plaintiff was transferred to the Green Bay Correctional Institution, defendant Peter Erickson put plaintiff in segregation because of plaintiff's activities as a jailhouse lawyer and complaints about prison conditions.

8. Sometime in late 2005 or early 2006, also while plaintiff was confined at the Green Bay Correctional Institution, defendants William Pollard and Peter Erickson violated plaintiff's Eighth Amendment rights by inducing him to experience symptoms of a heart attack.

9. In September 2005, defendants Erickson and Capt. Brant issued conduct reports to plaintiff and defendant Lt. Lambrecht placed plaintiff in segregation for "Enterprising and Fraud" and "Unauthorized Transfer of Property" in retaliation for plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

10. In 2005 and 2006, defendants William Pollard, Peter Erickson and Steven Schmidt conspired to send plaintiff to segregation because of plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

11. Sometime in late 2006, after plaintiff had been transferred to the Waupun Correctional Institution, defendants Bruce Muraski, Don Strahota, Captain Wierenga, Sergeant Voss and Captain O'Donovan conspired to place plaintiff in segregation because of his activities as a jailhouse lawyer and his complaints about prison conditions. In addition, defendant Muraski ordered officers to destroy plaintiff's legal materials and personal documents because of plaintiff's lawyering activities.

12. Also in late 2006, defendants Captain Wierenga, Sergeant Lehman, Don Strahota and Phil Kingston denied plaintiff his religious and legal materials because he is a Muslim and a jailhouse lawyer.

13. Sometime after January 16, 2007, defendant Siedschlag refused to advance plaintiff through the segregation step program and denied him access to the law library because of plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

Defendants have answered the complaint and a preliminary pretrial conference was held on October 23, 2007, before Magistrate Judge Stephen Crocker. At that time, the magistrate judge set a schedule for moving this case to resolution. Now, however, I must stay the proceedings, because a recent ruling of the Court of Appeals for the Seventh Circuit requires me to sever the majority of plaintiff's claims into separate lawsuits, and plaintiff will have to choose which of the separately identified lawsuits he wishes to prosecute under the case number assigned to this action.

In George v. Smith, --- F.3d ---, No. 07-1325 (7th Cir. Nov. 9, 2007) (copy attached), the court of appeals ruled that a prisoner may not "dodge" the fee payment or three strikes provisions in the Prison Litigation Reform Act by filing unrelated claims against different defendants in one lawsuit. Rather, district courts must sever unrelated claims against different defendants or set of defendants and require that the claims be brought in separate lawsuits. The court reminded district courts that Fed. R. Civ. P. 20 applies as much to prisoner cases as it does to any other case.

Fed. R. Civ. P. 20(a) governs the number of parties a plaintiff may join in any one action. It provides that a plaintiff may sue more than one defendant when his injuries arise out of "the same transaction, occurrence, or series of transactions or occurrences" and when there is "any question of law or fact common to all defendants." Thus, multiple defendants may not be joined in a single action unless the plaintiff asserts at least one claim to relief against each of them that arises out of the same transaction or occurrence or series of transactions or occurrences and presents questions of law or fact common to all. Id.; 3A Moore's Federal Practice ¶ 20.06, at 2036-2045 (2d ed. 1978). If the requirements for joinder of parties have been satisfied under Rule 20, only then may Fed. R. Civ. P. 18 be used to allow the plaintiff to join as many other claims as the plaintiff has against the multiple defendants or any combination of them, even though the additional claims do not involve common questions of law or fact and arise from unrelated transactions. Intercon Research Assn., Ltd. v. Dresser Ind., Inc., 696 F.2d 53, 57 (7th Cir. 1983)

(quoting 7 Charles Alan Wright et al., Federal Practice & Procedure).

In applying Rule 20 to this case, I conclude that plaintiff's complaint must be divided into nine separate lawsuits. These actions are not properly heard together in a single lawsuit under Rule 20 because they do not arise out of the same transaction occurrence, or series of transactions and occurrences. Plaintiff's unsupported belief that most if not all of the defendants were motivated to act against him because of his legal activities is not enough to transform the separate acts of the defendants into a "series of transactions or occurrences." Plaintiff is contending that a total of eighteen different individuals at three different institutions did different things to him at different times over a six-year period. The acts range from the trivial (confiscation of plaintiff's watch) to shockingly serious (putting poison in plaintiff's food and refusing him medical attention after he ingested slivered pieces of razor blades). For each act, plaintiff will have to prove that the act actually occurred and that the intent of the individual in committing the act was to punish plaintiff for engaging in legal activities. This will require plaintiff to conduct discovery specific to the separate incidents and the motivation of the separate individuals and to seek out witnesses specific to the individual events.

The central purpose of Rule 20 is to enable economies in litigation, such as trial convenience and timely resolution of disputes. Elmore v. Henderson, 227 F.3d 1009, 1012 (7th Cir. 2000); Mosley v. General Motors Corp., 497 F.2d 1330, 1332 (8th Cir.

1974). The Federal Rules, however, and the Prison Litigation Reform Act, recognize countervailing considerations to judicial economy. Rule 42(b), for example, provides for separate trials where the efficiency of a consolidated trial is outweighed by its potential prejudice to the litigants. Fed. R. Civ. P. 42(b); Grayson v. Kmart Corp., 79 F.3d 1086, 1097 (11th Cir. 1996). In addition, as recognized in George v. Smith, the Prison Litigation Reform Act's filing fee requirements are circumvented when prisoners are allowed to include a plethora of separate, independent claims in one lawsuit.

Here, not even considerations of convenience and expedited dispute resolution militate in favor of allowing plaintiff to proceed in one lawsuit with all of his claims. Indeed, severance of plaintiff's claims will further the aims of the PLRA and fairness. Although there may be a common question of law presented, there are no common questions of fact at issue. As noted above, proof of wrongdoing will be unique to each specific incident. Moreover, it seems likely that the defendants would suffer some prejudice if the claims are heard together. The likelihood of juror confusion if this case were tried as a whole is great in light of the large number of persons involved and the different incidents being contested. Some defendants may suffer prejudice if the jury concludes that other defendants, on different dates, acted in a manner that violated any of plaintiff's rights. In sum, plaintiff's claims are appropriately severed under Rules 20 and 18 as set forth below.

In what I swill call Lawsuit #1, plaintiff may litigate his claim that defendant Carol Cook put

"medicine or poison" in plaintiff's food in September 2001 in violation of his Eighth Amendment rights. In this same lawsuit, plaintiff litigate his claims that in March 2002, defendant Cook violated his Eighth Amendment rights and retaliated against him for exercising his right of access to the courts when she put handcuffs on plaintiff so tightly that it caused his wrists to bleed and when she refused to seek medical treatment for him.

In what I will call Lawsuit #2, plaintiff may litigate his claim that in September 2001, defendant Angie Wood put plaintiff in segregation in retaliation for his activities as a jailhouse lawyer and because of his complaints about prison conditions. In addition, plaintiff may litigate his claim that Wood violated plaintiff's Eighth Amendment rights in October 2001, when she failed to obtain medical care for plaintiff after learning the plaintiff had ingested pieces of razor blades that had been hidden in a piece of pie.

In what I will call Lawsuit #3, plaintiff may litigate his claim that defendants Kuster, Kirby Linjer and a John Doe officer violated plaintiff's Eighth Amendment rights when they assaulted plaintiff in his cell in February 2002.

In what I will call Lawsuit #4, plaintiff may litigate his claim that in March 200, defendants Linjer, Kuster and Kenneth Keller issued a conduct report against plaintiff and sentenced him to segregation because of his activities as a jailhouse lawyer and his complaints about prison conditions.

Under Fed. R. Civ. P. 18, plaintiff may add to either Lawsuit #3 or Lawsuit #4 his claim that in November 2001, defendant Linjer violated his Eighth Amendment rights by prolonging his exposure to smoke from a fire another inmate set in plaintiff's unit. In addition, he may add to either Lawsuit #3 or Lawsuit #4 his claim that in June 2001, defendant Kuster confiscated his watch in retaliation for plaintiff's work as a jailhouse lawyer and his complaints about prison conditions.

In what I will call lawsuit #5, plaintiff may litigate his claim that defendants William Pollard, Peter Erickson and Steven Schmidt conspired to send him to segregation in 2005 and 2006 because of his activities as a jailhouse lawyer and his complaints about prison conditions. In this same lawsuit, plaintiff may litigate his claim that sometime in late 2005 or early 2006, defendants Pollard and Erickson violated his Eighth Amendment rights by inducing him to experience symptoms of a heart attack. Finally, plaintiff may include in Lawsuit #5 his claim that in June 2002, defendant Erickson put plaintiff in segregation because of plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

In what I will call Lawsuit #6, plaintiff may litigate his claim that in September 2005, defendants Erickson, Capt. Brant and Lt. Lambrecht issued conduct reports to plaintiff and placed him in segregation for "Enterprising and Fraud" and "Unauthorized Transfer of Property" in retaliation for plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

In what I will call Lawsuit #7, plaintiff may litigate his claim that sometime in late 2006, after plaintiff had been transferred to the Waupun Correctional Institution, defendants Bruce Muraski, Don Strahota, Captain Wierenga, Sergeant Voss and Captain O'Donovan conspired to place plaintiff in segregation because of his activities as a jailhouse lawyer and his complaints about prison conditions. In addition, plaintiff may litigate his claim that defendant Muraski ordered officers to destroy plaintiff's legal materials and personal documents because of plaintiff's lawyering activities.

In what I will call Lawsuit #8, plaintiff may litigate his claim that in late 2006, defendants Captain Wierenga, Sergeant Lehman, Don Strahota and Phil Kingston denied plaintiff his religious and legal materials because he is a Muslim and a jailhouse lawyer.

Finally, in what I will call Lawsuit #9, plaintiff may litigate his claim that sometime after January 16, 2007, defendant Siedschlag refused to advance plaintiff through the segregation step program and denied him access to the law library because of plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

In light of George, I may apply the filing fee plaintiff paid in this case to only one of the nine lawsuits I have identified above. Plaintiff will have to choose which lawsuit that is. That lawsuit will be the only lawsuit assigned to this case number.

As for the other lawsuits, plaintiff has a more difficult choice. He may choose to pursue each

lawsuit separately. However, because he has struck out under § 1915(g), he will have to pay the full filing fee before he may proceed further with any one of them. Alternatively, plaintiff may choose to dismiss any or all of his remaining lawsuits voluntarily. If he chooses this latter route, plaintiff will not owe additional filing fees. Any lawsuit dismissed voluntarily would be dismissed without prejudice, so plaintiff would be able to bring it at another time.

I understand that it is not normally the case that a lawsuit may be withdrawn without prejudice when a case has progressed as far as this one has. However, in light of the unanticipated and far-reaching effect of the George decision on existing prisoner litigation. I intend to permit prisoner litigants in cases pending in this court at the time the George opinion was issued to dismiss without prejudice the separate lawsuits within their original complaint that have been identified as requiring severance.

ORDER

IT IS ORDERED that

1. Plaintiff may have until January 20, 2008, in which to identify for the court and defendants the separately numbered lawsuit identified in the body of this opinion on which he wishes to proceed under the number assigned to this case. As to this one lawsuit, plaintiff's filing fee payment will be applied.

2. Plaintiff may have until January 20, 2008, in which to advise the court which of the remaining

separately numbered lawsuits he will prosecute, if any, and which he will withdraw voluntarily.

3. For any lawsuit that plaintiff dismisses voluntarily, he will not owe a filing fee.

4. For any lawsuit that plaintiff advised the court he intends to prosecute, (other than the one plaintiff chooses to keep assigned to this case number) plaintiff will owe a separate $350 filing fee, which he must pay in full no later than January 17, 2008. The payment(s) may be submitted by a check or money order made payable to the clerk of court.

5. If, by January 20, 2008, plaintiff fails to respond to this order, I will enter an order dismissing the lawsuit as it presently exists with prejudice for plaintiff's failure to prosecute.

6. All proceedings are STAYED in this case pending plaintiff's response to this order.

Entered this 27th day of December, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge

APPENDIX I

Clerk's Office U.S. Court of Appeals
For the 7th Circuit
219 South Dearborn Street
Chicago, Illinois 60604

December 1, 2009

Re: Madyun v. Linjer, 08-4003.

Dear Clerk:

On October 24, 2009, I mailed a petition for rehearing En Banc in the above numbered case seeking consideration of this Court's October 9, 2009 decision by the three-judge panel to affirm the district court's dismissal of my civil rights suit. As of this date I have not been informed if the court will grant my petition or not, and I am on the 90 day time limit to file a Writ of Certiorari in the United States Supreme Court.

This letter is to ask the status of the reconsideration of the October 9, 2009, decision and whether the En Banc petition will be granted. Also, it is to ask if that motion stays the 90 days I have in which to file the Certiorari in the Supreme Court? I need to know these facts. Because if it does not stay the 90 days, I want to immediately file my writ with the Supreme court. Please get back to me on these important questions. Thank you.

Sincerely,
/s/Shaheed Madyun #75225
Pro Se Litigant.

APPENDIX J

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

12/4/09

Shaheed Taalib'din Madyun
#75225
WAUPUN CORRECTIONAL INSTITUTION
P.O. Box 351
Waupun, WI 53963-0000

Re: 08-4003, Taalib'din Madyun v. Linjer

Dear Mr. Taalib'din Madyun,

Your petition for rehearing is still pending. If the court denies your rehearing, you have 90 days from the date of that decision to file your Writ of Certiorari.

Sincerely,

Pro Se Clerk

Supreme Court, U.S.
FILED
JUN 28 2010
OFFICE OF THE CLERK

In The
Supreme Court of the United States
July Term 2010
Case No. 09-1263

SHAHEED TAALIB'DIN MADYUN
Petitioner,

v.

LT. KIRBY LINJER, et al.,
Respondents.

NOTICE OF AND PETITION FOR REHEARING OF THE JUNE 1, 2010 ORDER DENYING OF PETITION FOR WRIT OF CERTIORARI

SHAHEED MADYUN #75225
KMCI
Post Office Box 31
Plymouth, WI 53073-0031

Resubmitted June 25, 2010

BEST AVAILABLE COPY

BRIEFLY STATED GROUNDS

1. The interpretation of both 42 U.S.C. § 1983, And § 42 – U.S.C. § 1997e (a) Amendment By the district court and the Seventh Circuit Court of Appeals has clearly given rise to question. The Constitutionality of the acts of congress, which neither the United States nor any federal department, office, agency, officer or employee is a party. And based upon fairness to the complaining party, and protection of rights, the issue of first impression as presented in this case, whereas, the ruling/interpretation affect the public interest, as is completely prohibits prisoners who are subject to 42 U.S.C. § 1997e (a) from ever filing suits in court. If an agency and court are allowed to require prisoners to act on laws not in existence until a year after the initiation of action required to exhaust all available administrative remedy; and if the prisoner cannot foresee the future laws before they are passed into law, according to the district court and the circuit court, that prisoner is forever barred from filing suit in any court. This is the situation in this case, and the United States should –Take control and intervene for presentation of evidence in this case. See 28 U.S.C § 2403 (a). As the underlying result of the district court ruling has given correctional officials authority to murder inmates without fear of prosecution or lawsuit.

2. This case involves actions by prison officials that amount to attempted first degree murder of a prisoner who was viciously beaten by correctional officers who jammed a night stick up in the prisoners rectum and dislodged his colon, Kicked in his ribs, split his tooth down to the root, busted both of his wrists, fed him ground up razors and medicated his food and damaged the bones in his pelvis. Then denied him medical treatment, causing his body to heal crooked. As a direct result of their actions, this prisoner has been bleeding from his rectum for over eight years. He has had several rectal reconstructive surgeries in attempts to stop the bleeding and pain. The extensive damage caused by officers destroying his colon and denying him medical treatment for over a year has made it impossible to correct. This inmate is permanently crippled and walks with a cane, and recently spent six more months in the hospital again due to problems suffered from the attacks on him in February of 2002. He is entitled to seek redress for harms. The districts courts interpretation of 42 U.S.C § 1997e (a) to put impossible requirements on this prisoner to see into the future is permanent block on all prisoners, because if that is allowed to go unaddressed on the merits of the issue, certain courts may well be prone to requiring prisoners to see further than a year into future laws to be passed in order to initial a lawsuit in court. In the instant case the court only says this prisoner failed to exhaust an administrative remedy.

No where in the record does any court give an answer to this prisoners question of how can he exhaust remedy not in existence during the time the inmate filed the only agency remedy available to prisoners at that time: The warden, Judy Smith [1] provided a sworn affidavit stating the prisoner had no obligation to appeal a rejected complaint to her during the time of the incident, and the inmate had exhausted the only available avenue and remedy when he filed his complaint which was rejected. This is not just a case on the application of 42 U.S.C. § 1997e (a). This is also a case where the district court used the misapplication by applying it to events not in existence. The court further expanded it to denying inmates all discovery requests, denying all interrogatories requests and denying all witness to prisoner. The reality being there was a total denial to access the courts. This matter needs to be put in the competent hand of the United States Government and not left to be addressed by a Pro Se Prisoner. For those stated two reasons, it is asked that the court reconsider its denial of the petition for Writ of Certiorari on June 1, 2010 pursuant to rule 44 (a). It is further asked that a rehearing be granted and that pursuant to 28 U.S.C § 2403 (a) the solicitor general of the United States be required to intervene in this case because of the constitutionality of an act of congress being drawn unto question in this case.

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1 See Exhibit #1 Warden Judy Smith Affidavit

Said solicitor general has now been served with Madyun's petition for Writ of Certiorari, and a copy of this petition. Also the Wisconsin attorney generals office has been served with a copy of this petition. Madyun prays this court grants a rehearing.

Dated This 25 Day of June 2010
Submitted By:

/s/_____
SHAHEED TAALIB'DIN MADYUN
Pro Se Litigant #75225
Kettle Moraine Corr. Inst.
Post Office Box 31
Plymouth, WI 53073-0031

cc: file
STM: kmw

Copy Mailed To:

Wisconsin Attorney General
Post Office Box 7857
Madison, Wisconsin 53707-7857, And

Solicitor General of the U.S.,
Room 5614
Department of Justice
950 Pennsylvania Avenue
N.W. Washington, DC 20530-0001

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

SHAHEED TALLIB'DIN MADYUN, BETTY LOU MADYUN and LARRY KISER,
Plaintiffs

v. Case No. 04-C-0343

LEMON, CAROL COOK, VAN RYAN, JUDY SMITH, JON E. LITSCHER, KENNETH KELLER, CERN PONTO, MARTY SCHROEDER, LIZ LEMERY, VAN GHEEM, SUE KRUEFER, CHRIS KRUEGER, WENDY BRUNS, SHERRY FASSBENDER, CAPTAIN JONES, ANGIE WOOD, PETER ERICKSEN, J SCHWOCHERT, etal.,

Defendants.

AFFIDAVIT OF JUDY P. SMITH

STATE OF WISCONSIN)
) ss.
COUNTY OF WINNEBAGO)

JUDY P. SMITH, being first duly sworn, on oath deposes and states as follows:

1. I make this affidavit based upon my own personal knowledge and review of regularly maintained institution records, in support of

Defendants' Motion for summary Judgment. I have been named as a defendant in the above-entitled action.

2. I have been employed by the Wisconsin Department of Corrections ("DOC") as Warden of Oshkosh Correctional Institution ("OSCI") since September 1996. I have been employed by the State of Wisconsin since March 1980.

3. In my capacity as Warden at OSCI. I have the duties and responsibilities as generally defined by Wis. Stat. § 302.04, and as otherwise specifically set forth in the Wisconsin Statutes and Wisconsin Administrative Code.

4. As Warden, I am responsible for the overall administration and operation of the institution. I have the responsibility at the institution level for implementing all DOC policies ad directives, administrative codes and legislative and judicial mandates.

5. Plaintiff, inmate Shaheed Taalib'din Madyun, was incarcerated at OSCI from April 6, 2001 to June 6, 2002.

6. I have reviewed the Memorandums sent to plaintiff, dated March 8, 2002 and March 12, 2002, respectively, true and correct copies of which are attached and incorporated as Exhibit A.

7. I am aware that plaintiff contends that the March 8, 2002 letter was sent to him in response to an appeal of a rejected complaint he allegedly submitted on or about February 28, 2002.

8. There is no record that plaintiff ever filed an appeal on a rejected complaint on or about this time period.

9. Even if plaintiff had filed an appeal to a rejected complaint, prior to December 1, 2002,

inmates did not submit such appeals to the institution warden unless the complaint was rejected on the grounds that it was deemed frivolous in nature. Such appeals were submitted to the Corrections Complaint Examiner ("CCE"). In addition, plaintiff would not have been sent a memo in response to such an appeal. Appeals were responded to in a different format.

/s/ Judy P. Smith

Subscribed and sworn to before me
This 25th day of August 2005

/s/ (unreadable)
Notary Public State of Wisconsin
My commission expires 12-2009